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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11
12 **DANILO CARDENAS CABANAYAN**
34189 Finnigan Terrace
Fremont, CA 94555
13 Registered Nurse License No. RN 427184

Case No. **2010-258**
ACCUSATION

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about January 1, 1988, the Board of Registered Nursing issued Registered
22 Nurse License Number RN 427184 to Danilo Cardenas Cabanayan (Respondent). The Registered
23 Nurse License was in full force and effect at all times relevant to the charges brought herein and
24 will expire on December 31, 2009, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
2 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2761 of the Code states:

6 "The board may take disciplinary action against a certified or licensed nurse or deny an
7 application for a certificate or license for any of the following:

8 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

9 "(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
10 functions.

11 ...

12 6. California Code of Regulations, title 16, section 1442, states:

13 "As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
14 the standard of care which, under similar circumstances, would have ordinarily been exercised by
15 a competent registered nurse. Such an extreme departure means the repeated failure to provide
16 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
17 situation which the nurse knew, or should have known, could have jeopardized the client's health
18 or life."

19 7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
20 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
21 licensee or to render a decision imposing discipline on the license.

22 8. Section 118, subdivision (b), of the Code provides that the expiration of a license
23 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
24 within which the license may be renewed, restored, reissued or reinstated.

25 9. Section 15630 of the Welfare and Institutions Code provides, in pertinent part:

26 "(a) Any person who has assumed full or intermittent responsibility for the care or custody
27 of an elder or dependent adult, whether or not he or she receives compensation, including
28 administrators, supervisors, and any licensed staff of a public or private facility that provides care

1 or services for elder or dependent adults, or any elder or dependent adult care custodian, health
2 practitioner, clergy member, or employee of a county adult protective services agency or a local
3 law enforcement agency, is a mandated reporter.

4 “(b)(1) Any mandated reporter who, in his or her professional capacity, or within the scope
5 of his or her employment, has observed or has knowledge of an incident that reasonably appears
6 to be physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code,
7 abandonment, abduction, isolation, financial abuse, or neglect, or is told by an elder or dependent
8 adult that he or she has experienced behavior, including an act or omission, constituting physical
9 abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, abandonment,
10 abduction, isolation, financial abuse, or neglect, or reasonably suspects that abuse, shall report the
11 known or suspected instance of abuse by telephone immediately or as soon as practicably
12 possible . . .”

13 FIRST CAUSE FOR DISCIPLINE

14 (GROSS NEGLIGENCE)

15 10. Respondent is subject to disciplinary action under section 2761(a)(1) in that he was
16 grossly negligent when he failed to manage the care of a patient who regularly sexually abused
17 other patients. The circumstances are that Respondent was the Director of Nursing and co-owner
18 of St. Therese Convalescent Hospital in Hayward, California in 2003. On or about May 21, 1998,
19 “Resident 8” was admitted to St. Therese Convalescent Hospital. On or about July 25, 2003,
20 Respondent was made aware of complaints that Resident 8 had acted inappropriately toward
21 female residents, touching their breasts and buttocks, going into their bedrooms at night and
22 reaching under their covers, exposing and rubbing his genitalia. Respondent assured the residents
23 that Resident 8 would be monitored 24 hours a day. However, as of December 5, 2003, Resident
24 8 had continued to abuse other female residents on a nearly constant basis, with hundreds of
25 incidents of abuse recorded in Resident 8’s medical record.

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1 SECOND CAUSE FOR DISCIPLINE
2 (FAILURE TO REPORT PATIENT ABUSE)

3 11. Respondent is subject to disciplinary action under section 2761(a)(1) in that he acted
4 unprofessionally when he failed to report to law enforcement or the State Department of Public
5 Health (in accordance with Welfare and Institutions Code section 15630) a patient who regularly
6 sexually abused other patients, as alleged in paragraph 10 above.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

10 1. Revoking or suspending Registered Nurse License Number RN 427184, issued to
11 Danilo Cardenas Cabanayan.

12 2. Ordering Danilo Cardenas Cabanayan to pay the Board of Registered Nursing the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;

15 3. Taking such other and further action as deemed necessary and proper.
16
17

18 DATED: 11/9/09

19 for

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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